

Harbor City Volunteer Ambulance Squad, Inc. and International Association of EMT's and Paramedics, a division of National Association of Government Employees, S.E.I.U., AFL-CIO, Petitioner. Case 12-RC-7790

August 25, 1995

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

On November 18, 1994, the Regional Director for Region 12 issued a Decision and Direction of Election in the above-entitled matter, in which she found three assistant shift supervisors, two assistant NEMT supervisors, and three field training officers (FTOs) not to be statutory supervisors. The Employer filed a timely request for review of the Regional Director's decision. The election was held on December 15 and 16, 1994, and the ballots were impounded. By Order dated January 5, 1995, the Board (Chairman Gould dissenting) granted the Employer's request for review. Having carefully considered the entire record, the Board has, for the reasons set forth below, decided to affirm the Regional Director's finding as to the FTOs and to reverse the Regional Director's finding as to the assistant shift supervisors and assistant NEMT supervisors.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Contrary to the Regional Director, we find that the assistant shift supervisors and assistant NEMT supervisors (assistant supervisors) are supervisors under Section 2(11) of the Act because of their role in evaluating employees. Thus, assistant supervisors, together with the shift supervisors, prepare annual evaluations of the employees, rating employees on a scale from one to five. Employees are evaluated on both work and personal characteristics, e.g., work quality, communication, appearance, and punctuality. The total number of points is compiled and then the assistant supervisor calculates the final percentage according to a particular formula. This percentage automatically becomes the percentage of the merit increase that the paramedic receives. The evaluations are effective and have never been changed by upper management.

The Employer's director of operations testified that the assistant supervisors perform the annual evaluations because they are the ones who primarily work with the paramedics. The evidence establishes that preparation of the evaluations is a collaborative effort between the assistant and the shift supervisors. The assistant supervisors and the shift supervisors prepare the evaluations together, e.g., each prepares an evaluation in pencil and they get together to discuss it and come up with a final percentage. We disagree with our dis-

senting colleague that such a collaborative effort in this case amounts to an effective review and approval of the evaluations by the shift supervisors. In fact, if there are any differences in opinion, they discuss it and then formulate the overall percentage together. There is no evidence that the shift supervisors ever unilaterally change a rating, or that the shift supervisor retains ultimate authority in this area. Thus, it appears that the assistant supervisors play at least an equal role, if not a primary role, in the evaluation process.

Further, it is undisputed that these evaluations lead to an automatic wage increase for the evaluated employees. Consequently, based on the significant role played by the assistant supervisors with respect to annual evaluations, we conclude, contrary to the Regional Director, that the assistant supervisors possess and exercise statutory supervisory authority.¹ See *Bayou Manor Health Center*, 311 NLRB 955 (1993), in which the Board found that the employer's licensed practical nurses were statutory supervisors solely because the evaluations they completed affected the salaries of the employer's nursing aides, as there was a direct correlation between the evaluations and the merit increases or bonuses awarded. See also *Health Care & Retirement Corp.*, 310 NLRB 1002, 1006-1007 (1993).

The Employer claims that FTOs are also statutory supervisors because they, as do assistant shift supervisors, evaluate new paramedics and make recommendations regarding whether the paramedic is to be retained for further training, advanced to solo status, or terminated, although there have been no actual recommendations for termination made. It is undisputed that these recommendations are followed by the shift supervisors and the director of operations. The ability to evaluate employees however, without more, is insufficient to establish statutory supervisory authority. *Passavant Health Center*, 284 NLRB 887 (1987). Here, there is no evidence that the recommendations to advance the paramedics to solo status signal the end of their probationary status; there is no evidence that advancing to solo status necessarily leads to permanent employment or a change in pay status; and there is no evidence establishing what, if any, impact a recommendation for further training has on the employees' job status. Thus, although these recommendations made by FTOs and assistant supervisors are effective, the ability to make recommendations for extended training or advancement to solo status, absent any evidence of the impact on the employees' job status, does not constitute the kind of personnel decision that establishes statutory supervisory authority. Cf. *Burns International Security Services*, 278 NLRB 565 (1986), in

¹ We therefore find it unnecessary to pass on the Employer's contentions that they are supervisors because of their authority to discipline or terminate employees, hire employees, assign overtime, direct work and set hours, and substitute for shift supervisors.

which the Board found sergeants to be supervisors because they were responsible for the training and evaluation of probationary guards and could remove probationary guards from their posts for retraining without consulting senior supervisors; if a guard refused, he or she would ultimately be suspended. Consequently, we affirm the Regional Director's finding that the FTOs are not 2(11) supervisors.

Accordingly, in view of the above, we affirm the Regional Director's decision with respect to the FTOs, and reverse her decision with respect to the assistant shift supervisors and assistant NEMT supervisors. We therefore find that the assistant shift supervisors and assistant NEMT supervisors are excluded from the unit. This case is remanded to the Regional Director for the purpose of opening and counting the ballots and for further appropriate action.

CHAIRMAN GOULD, dissenting in part.

I agree with the majority's conclusion that FTOs are not statutory supervisors. I disagree, however, with my colleagues' finding that assistant supervisors possess and exercise Section 2(11) supervisory authority because of their collaboration with shift supervisors (stipulated by the parties to be statutory supervisors) in the preparation of employee evaluations.

There is no evidence that the assistant supervisors independently determine employee ratings or that they effectively recommend such ratings. Instead, the final ratings are a joint effort between the assistant supervisors and the shift supervisors who, together, decide the employees' percentage figure. As a consequence, all employee ratings have been reviewed by, and have the approval of, the shift supervisors. Moreover, there is no record evidence that these ratings are based on the recommendations of the assistant supervisors or that the assistant supervisors' opinions are the determining factor. Consequently, although the employees' rating automatically determines the employees' merit increase, the cases cited by the majority, *Bayou Manor Health Center*¹ and *Valley View Nursing Home*² are distinguishable as the LPNs and unit supervisors in those cases did not discuss or work with a statutory supervisor in filling out the evaluation form, but instead independently determined employee evaluations.

Accordingly, I would affirm the Regional Director's finding that FTOs and assistant supervisors are not supervisors under Section 2(11) of the Act.

¹ 311 NLRB 955 (1993).

² 310 NLRB 1002, 1006-1007 (1993).